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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,462	02/15/2006	Wolfgang Rochrl	1703 1491US	2365

29894 7590 10/23/2006

DREISS, FUHLENDORF, STEIMLE & BECKER  
POSTFACH 10 37 62  
D-70032 STUTTGART,  
GERMANY

EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

## Office Action Summary

Application No.

10/568,462

Applicant(s)

ROEHRL ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed February 15, 2006 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Objections***

Claim 18 objected to because of the following informalities: the word "at" is listed twice in line 5. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19, 22 – 24 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte*

*Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, the claims recite a broad recitation and a narrower statement of the range/limitation.

Claim 21 recites the limitation "said intending breaking lines" in 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 18, 20 – 21, 25 – 26 and 28 – 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Datta et al. (US 2002/0165514).

With reference to claim 18, Datta et al. (hereinafter "Datta") discloses a disposable diaper for incontinent care, the disposable diaper comprising a hip belt (107), said hip belt defining a closed hip opening in a peripheral direction and having means for opening and closing said hip belt at least in one location (60); a main diaper portion (27), said main diaper portion having a front region, a rear region, an intermediate crotch region (figure 1), a liquid impermeable back sheet, a liquid permeable top sheet, and an absorption body, said main diaper portion also having two intended breaking lines (70) disposed in said main diaper portion and extending from a

longitudinal end region of the main diaper portion towards the crotch region, wherein a middle section of the main diaper portion disposed between and defined by said intended breaking line is structured and dimensioned to fold or open away from said hip belt along the intended breaking lines in the main diaper portion (page 7 – 0067); first closing means for attaching said main diaper portion to the hip belt in a detachable manner at a longitudinal end of the front region such that, with the hip belt applied, a user raises said main diaper portion between the legs and attaches a free longitudinal end of the main diaper portion to the hip belt in a detachable fashion; and second closing elements communicated with said middle section to attach said middle section to said hip belt or to bordering regions of said main diaper portion to once more close the diaper after said middle section has been folded or opened away as set forth on pages 7 – 9, [0067 – 0086].

With respect to the claimed functional limitations, the examiner contends that the article of Datta is fully capable of performing the recited functions and reminds the applicant that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With reference to claim 20, Datta discloses a diaper wherein a width of the middle section varies in a longitudinal section and decreases from a longitudinal end region of the main diaper portion towards the crotch region as set forth in figure 4 as shown by the hourglass shaped absorbent core. Likewise, the examiner contends that

any width in relation to any other width may be considered in order to meet the claimed limitations.

With respect to claim 21, Datta discloses a diaper wherein regions of the main diaper portion bordering the intended breaking lines are configured in a longitudinally extending fashion as set forth in figure 6.

As to claims 25 and 26, Datta discloses a diaper wherein the second closing means bridge over the intended breaking lines along an entire length as set forth in figure 3.

With reference to claim 28, Datta discloses the diaper wherein regions of the main diaper bordering the intended breaking lines form an impact region for the second closing means as set forth on page 7 [0071].

As to claim 29, Datta discloses a diaper wherein the intended breaking lines are formed by weakened locations as set forth on page 9, [0085].

With reference to claim 30, Datta discloses a diaper wherein the intended breaking lines extend in a transverse direction of the diaper outside of the absorbent body as set forth in figure 4.

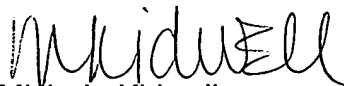
As to claim 31, Datta discloses a diaper further comprising the claimed elastification means (58) as set forth on page 5, [0054].

With reference to claims 32 – 34, Datta discloses the claimed first and second closing means as set forth in figures 1 – 3 and 5 – 6.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Michele Kidwell  
Primary Examiner  
Art Unit 3761